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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,095	10/21/2003	Satoshi Imaizumi	WEN-0024	8955

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EXAMINER

FARAH, AHMED M

ART UNIT PAPER NUMBER

3739

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,095

Applicant(s)

IMAIZUMI, SATOSHI

Examiner

Ahmed M Farah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1 and 7-10 is/are rejected.
- 7) ☒ Claim(s) 2-6 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims 1 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sumiya et al. U.S. Patent No. 5,906,608 in view of Marshal et al. U.S. Patent No. 4,941,093.

Sumiya et al. disclose a corneal ablation apparatus comprising a laser source for emitting ablation laser beams; an irradiation optical system for directing and irradiating the ablation laser beams onto a surface of a cornea being treated; and an aperture arranged in the optical path of the ablation laser beams (see Fig. 1).

However, Sumiya et al. do not teach the use of a convex or spherical optical element arranged in the optical path to manipulate the intensity distribution of the treatment laser beams. Marshal et al. teach an alternative ophthalmic device comprising a convex lens arranged in an irradiation path for collection laser beams and a spherical lens arranged in the same irradiation path for manipulating the intensity distribution of the treatment laser beams (see Figs. 1, 14, 17, and 19).

Therefore, it would have been obvious to one skilled in the art at the time of the applicant's invention to modify Sumiya et al. in view of Marshall et al. and use any

combination of lenses selected from the group consisting of, such as a concave, convex, cylindrical, or spherical, etc, to manipulate the intensity distribution of the ablation laser beams in order to provide a desired visual correction. The use of combination of lenses to produce a predetermined intensity distribution is well known in the optical and ophthalmological arts.

2. Claims 1 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kodo et al. U.S. Patent No. 6,679,876 in view of Marshal et al. U.S. Patent No. 4,941,093.

Kodo et al. disclose a corneal ablation apparatus comprising a laser source for emitting ablation laser beams; an irradiation optical system for directing and irradiating the ablation laser beams onto a surface of a cornea being treated; and an aperture arranged in the optical path of the ablation laser beams (see Fig. 1).

However, Kondo et al. do not teach the use of a convex or spherical optical element arranged in the optical path to manipulate the intensity distribution of the treatment laser beams. Marshal et al. teach an alternative ophthalmic device comprising a convex lens arranged in an irradiation path for collection laser beams and a spherical lens arranged in the same irradiation path for manipulating the intensity distribution of the treatment laser beams (see Figs. 1, 14, 17, and 19).

Therefore, it would have been obvious to one skilled in the art at the time of the applicant's invention to modify Kondo et al. in view of Marshall et al. and use any combination of lenses selected from the group consisting of, such as a concave,

convex, cylindrical, or spherical, etc, to manipulate the intensity distribution of the ablation laser beams in order to provide a desired visual correction. The use of combination of lenses to produce a predetermined intensity distribution is well known in the optical and ophthalmological arts.

Allowable Subject Matter

Claims 2-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the following references:

U.S. Patent No. 5,147,349 to Johnson et al. and U.S. Patent No. 6,063,072 to Muller teach the use of a combination of a convex lens and a spherical lens to manipulate the intensity distribution of ablative laser beams. See Fig. 1 of Johnson et al. and Fig. 4 of Muller, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M Farah whose telephone number is (703) 305-5787. The examiner can normally be reached on Mon-Thur. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM on every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M DVorak can be reached on (703) 308-0994. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Farah,
Primary Examiner, AU: 3739



December 12, 2004.